IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 803 of 1990

with

SPECIAL CIVIL APPLICATION No 926 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

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RAVJIBHAI S VASAVA

Versus

DISTRICT PANCHAYAT

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Appearance:

1. Special Civil Application No. 803 of 1990

MR PV HATHI with Mr.H.P.Ravalfor Petitioner No. 1

MR PM RAVAL for Respondent No. 1

NOTICE SERVED for Respondents No. 2-3

MR RC KODEKAR AGP for Respondent No. 4

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CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 08/02/2002

C.A.V. JUDGEMENT

1. These petitions under Article 226 of the Constitution against the same respondents involving common issues were argued together and are disposed by this common judgment.

2. In Special Civil Application No.803 of 1990, the petitioner was appointed as Assistant Instructor in Carpentry Classes conducted through the Taluka Panchayat, Valia on 10.11.1976. Although the appointment was on temporary basis and subject to the rules in force from time to time under Section 203 of the Gujarat Panchayats Act, he was granted some of the permanency benefits, according to the petition. After such continuous service of about 14 years, the petitioner was sought to be removed from service for the reason that the Gujarat Panchayat Service Selection Board (`GPSSB' for short), the respondent No.3 herein, had not approved the appointment. On the other hand, the petitioner had made an application to the GPSSB for recruitment to the higher post of Instructor in February 1989 and after an interview, he was even selected for that higher post and his name was kept in the list of selected candidates. The petitioner has also alleged discrimination in the matter of approval by the GPSSB of similar appointments. The respondents have not cared to deny any of the averments, even as the petitioner has continued to enjoy interim relief against termination of his service for the last 12 years.

3. In Special Civil Application No.926 of 1990, the petitioner has similarly been appointed on 16.11.1976 as Assistant Instructor in Wireman Classes conducted through the Taluka Panchayat, Sagbara and other facts and averments are similar. It is averred in both the petitions that in a number of other cases, such workmen had approached this Court and those petitions were admitted and interim reliefs were also granted. The main contentions of the petitioners are that they were duly selected and appointed after an interview and after a prolonged period of service, despite vacancies and availability of work, their services were being terminated only on the ground that the GPSSB had not approved their appointments.

4. An affdiavit-in-reply of the District Development Officer is filed in the latter petition to contend that the petitioner was given temporary appointment for the purpose of implementing a scheme for imparting training.

That training programme sponsored by the Government and the training classes thereunder continued, but the GPSSB directed the District Panchayat to give appointments to the persons who had passed the examination of, and were selected by the Board. The District Panchayat requested the Board to approve the appointments of 13 temporary appointees, but such proposal was turned down by the Board as well as the Government. Therefore, the District Panchayat submitted a requisition to the GPSSB for filling up such posts and when the GPSSB undertook the selection procedure, the petitioner was again selected but his name was kept in the waiting list. In such circumstances, in order to give appointments as per the waiting list, the impugned order dated 1.2.1990 discharging the petitioner had to be issued. However, after filing of the affidavit-in-reply and hearing the respondents, this Court has, by an order of interim relief dated 25.7.1990, directed the respondents to permit the petitioner to resume his duty. Thus, the petitioner has completed the service of about 14 years before and 12 years after the order dated 1.2.1990 terminating his service only on the ground that his appointment was temporary and the same was not approved by the GPSSB.

5. While admitting both these petitions, they were ordered to be heard with Special Civil Application No.7527 of 1988 which has been disposed by the judgment dated 26.10.1999 (Coram: S.k.Keshote, J.) with the order as under:

> "12. In the result, this special civil application succeeds and it is allowed and it is hereby declared that the petitioner's services are not liable to be terminated and his appointment as Wireman Assistant Instructor in the lower pay scale is legal and justified, to which no exception can be taken. Rule is made absolute accordingly with no order as to costs."

There is also no dispute about the fact that other similar matters being Special Civil Applications Nos.5663 of 1988, 497 of 1989, 527 of 1989 etc. are disposed on the same lines. There was also consensus that the appointments which have been upheld in those matters were similar to the appointments of the petitioners made by the same Panchayat and in view of the fact that none of the aforesaid judgments have been challenged, similar orders are required to be made in these petitions. The learned counsel Mr.Raval, however, also clarified that due to the prolonged period of service rendered by the

petitioners before and after the admission of these petitions and to avoid further legal complications, he was restraining himself from addressing the Court on merits and, reserving his contentions, only urged to clarify that the judgment in these matters should not be cited as a precedent in other cases.

6. In the facts and on the submissions as above, the petitions are allowed and the impugned action and/or orders to terminate the services of the petitioners are set aside; with the clarification that this order shall not be a precedent for other similar cases. Rule is made absolute accordingly with no order as to costs.

Sd/-

( D.H.Waghela, J.)

(KMG Thilake)